

VZCZCXRO5450
RR RUEHDBU RUEHLN RUEHSK RUEHVK RUEHYG
DE RUEHMO #3009/01 3481509
ZNR UUUUU ZZH
R 141509Z DEC 09
FM AMEMBASSY MOSCOW
TO RUEHC/SECSTATE WASHDC 5651
INFO RUCNCIS/CIS COLLECTIVE
RUEHOT/AMEMBASSY OTTAWA 0001
RUEHBS/USEU BRUSSELS
RUEHRC/DEPT OF AGRICULTURE WASHDC
RUCPDOG/DEPT OF COMMERCE WASHDC
RHEHAAA/WHITE HOUSE WASHDC

UNCLAS SECTION 01 OF 04 MOSCOW 003009

SENSITIVE
SIPDIS

DEPARTMENT FOR EUR/RUS AND EEB
WHITE HOUSE FOR USTR--EHAFNER

E.O. 12958: N/A

TAGS: [ETRD](#) [EAGR](#) [ECON](#) [RS](#)

SUBJECT: CUSTOMS VALUATION CHALLENGES IN RUSSIA, AND NOW
THE CUSTOMS UNION

Summary

1. (SBU) Over the course of the last twelve months, U.S. exporters have been experiencing increasing difficulties with customs valuations on their exports to Russia. Following several months of effort, Emboffs were able to schedule a meeting with officials from the Russian Federal Customs Service (FCS) on August 28. Emboffs focused on the increased inconsistency in the application of customs valuation procedures, and the increased claims of undervaluation by customs officials. In response, FCS reviewed Russian customs valuation guidelines and dispute resolution measures, as laid out in Russian law, emphasizing that customs officers have not strayed from these procedures. The lead FCS officer closed the meeting by cryptically admitting that the global financial crisis had created an "extraordinary situation" for FCS that called for unusual measures. While no resolution was found, Emboffs succeeded in registering USG concern over inconsistencies in customs valuation procedures and in establishing a basis for future discussions of this topic. However, this situation has now been complicated by the up-coming entry into force on January 1, 2010 of the Russia, Belarus, Kazakhstan Customs Union (RBKCU). While the RBKCU Customs Code section on valuation is practically identical to current Russian regulations, implementation of valuation by Belorussian and Kazakh customs officials may be inconsistent for a while, causing more headaches for U.S. exporters. End Summary.

2. (U) Starting in November 2008, various U.S. exporters began contacting the Embassy, noting that the Russian Federal Customs Service (FCS) was requesting unnecessary additional documentation in customs valuations procedures and disputing declared values of U.S. exports. The Embassy's Agricultural Trade Office (ATO) verified that European and Canadian exporters were experiencing similar problems, particularly with meat and cut flower exports. EU mission officers stated that FCS disregarded EU complaints that they were not following the WTO valuation agreement. After numerous attempts to set up a meeting, Emboffs were finally able to obtain an appointment with FCS Deputy Chief of the General Directorate for Federal Customs Revenues and Tariff Control Oleg V. Dorochenko, and Senior Trade Customs Inspectors Igor O. Smitenko and Nadezhda L. Razumkova.

The Problem

3. (SBU) Beginning in November 2008, the Embassy began receiving complaints from various U.S. exporters regarding customs valuation practices being implemented by the Russian Federal Customs Service. Emboffs fielded complaints

regarding almonds, meat, peanut butter, and other nuts.

--Almonds: The Almond Board of California, which accounts for roughly 80% of global almond production, informed the ATO that FCS was requesting additional documentation, including the Shipper's Export Declaration (SED), to prove the value of their exports. The Almond Board had tried to demonstrate to Russian customs officials that the world price of almonds had declined to \$4 per kilo in 2008, but the FCS insisted that they pay duties based on the previous year's (substantially higher) average price.

--Meat: This problem cropped up in the meat market as well. Industry representatives in this sector, however, were able to initiate meetings and demonstrate world prices without Embassy assistance.

--Peanut Butter: FCS officials requested that the peanut butter exporter American Trading International, Inc. provide the manufacturer's original price list, which legally has no bearing on the actual export price of any particular customs transactions.

--Nuts: Several nut importers chose to pay the fees and then litigate the case. While ultimately successful, they had to wait six months to get the overpayment back. Functionally the funds are not returned to the importer, but rather used to cover inflated tariff payments charged to the importer for more recent customs transactions. It essentially amounts to a "shell game" in which importers are forced to lend FCS funds on a rolling basis.

MOSCOW 00003009 002 OF 004

14. (SBU) U.S. exporters had a variety of responses to the FCS requests. Some surrendered additional documents like the SED, while others negotiated values directly with Russian customs officials. These varied approaches strained relations with Russian importers. In the case of almonds, Russian buyers informed the ATO that, as a result of the customs valuation issues, their purchases of California almonds were 20-30% less than they had originally planned from December 2008-February 2009. Although trade has increased again for larger exporters, smaller traders are still unable to offset the costs of the inflated and inconsistent tariffs FCS is imposing.

The Russian Response

15. (U) Embobbs began the meeting with the FCS by requesting clarification as to which process the FCS is currently using to determine tariffs and which documents it used for valuation. Senior Inspector Smitenko insisted that valuation is carried out according to the uniform procedure outlined in the Law on Customs Tariffs, which is consistent with Article Seven of the GATT. In 90% of the cases, the Single Administrative Document (SAD), a unified document for Russian customs declaration that integrates Russia with the common European transit procedures, is used to calculate transaction value. The declarant presents the SAD along with the shipping invoice. If the price for a product is reduced due to a specific contract negotiation or to a drop in world prices, then the declarant must show the contract indicating the negotiated discount or some proof of the new world price.

16. (SBU) Deputy Director Dorochencko noted that, while a new lower price on goods should not be grounds for rejection of the declared value, the FCS reserves the right to question a declared value and request further documentation. The declarant can submit documents such as invoices, correspondence of negotiation, or payment documents to confirm value. (Note: The importer must pay storage fees for products for the period during which the valuation is disputed. Thus, customs officials have an incentive to draw out the process, while importers have an incentive to settle

quickly - even if it means paying a higher valuation than they believe necessary. End Note.) While Smitenko insisted that customs officials were doing their jobs correctly, U.S. (and European) exports claim that customs officials are inconsistently adhering to their own protocol and often bypassing steps in the process as outlined in the law.

When Value Is Questioned -- What Can A Company Do?

¶17. (U) According to Smitenko, the declared value can only be rejected for reasons listed in the law, and the FCS must inform the declarant of the reason and suggest different methods for stating the value. Smitenko then presented two alternate scenarios. The first is for FCS to reject the declared value and request the declarant come back with new documents. The second is for customs officials to "advise" the declarant, before the clearance procedure begins, that a preliminary review has generated doubts as to the declared value. Smitenko stated that if the declarant refuses to present acceptable alternative proof of value, FCS will make its own determination, often using a different shipment of identical goods, price lists, or catalogues of identical goods found on the internet as reference. The declarant can also present any or all of these documents voluntarily for consideration by FCS.

¶18. (SBU) According to FCS officials, declarants also have the option of paying a guarantee. The goods clear customs and can be brought to market, while the declarant engages in the procedure of confirming value with FCS. Smitenko emphasized that this pre-clearance procedure does not mean that the declarant accepts the value on which the guarantee is based. After the value is determined (within 120 days) any difference between the guarantee and the tariff duties can be refunded or applied to the next shipment. Emboffs noted that importers prefer to litigate rather than use the guarantee because the time frame for resolution is more reliable.

SED -- Still Pushing For It

MOSCOW 00003009 003 OF 004

¶19. (U) Smitenko proposed the use of the Shipper's Export Declaration (SED) as an alternative method for declaring/proving the value of goods. Emboffs emphasized that this document is completed by the shipper for statistical purposes only, and is in no way reviewed, verified or confirmed by the USG. Smitenko claimed to be aware of this but stated that he believed the document was valuable as it represents a "pledge" to the USG by exporters of the true value of their shipment.

But Exporters Are Saying Differently

¶10. (U) Throughout the conversation, Emboffs used examples from American exporters to underscore the lack of consistency in the application of the regulations and procedures Smitenko outlined. Specifically, they expressed concern about the emphasis on requesting price lists and SEDs. Emboffs stressed that these problems make importing into Russia opaque and create new, informal barriers to trade, which hurt the Russian economy in the long run.

FCS Declaring A Force Majeure Of Sorts?

¶11. (SBU) Dorochencko closed the meeting by noting that the issues raised were important to Russia. He stated that the USG should be aware that there are external reasons for changes, such as the world financial crisis. He added that Russia understands the USG's desire to know the rules of the game, but in the current situation "there are other factors affecting the stability of such issues."

A GOR Counter-Point

¶12. (SBU) Sergey Shilov, Deputy Director for the Department

of Foreign Economic Relations at the Ministry of Industry and Trade, told Econoff on September 10 that customs valuation should not be an issue because the FCS just invested in a new database which collects information from all shipments into Russia and calculates average prices for goods based on transaction records. According to Shilov, all customs officers should have access to this system at each entry point. However, ATO stressed that this price reference system may not accurately reflect world prices.

And Additional Wrinkle- a New Customs Union

¶13. (SBU) On November 27, Russia, Belarus and Kazakhstan signed agreements implementing a Customs Union (RBKCU) among the three countries as of January 1, 2010. A review of the customs valuation section of the RBKCU's harmonized Customs Code does not reveal any differences from Russia's current valuation procedures, as laid out above. This does not ensure, however, its even application at all Russian, Belorussian and Kazakh ports of entry. Complicating the matter, the RBKCU's harmonized Customs Code does not enter into force until July 1, 2010, making the initial six months of the Customs Union a time when the valuation procedures of all three countries will be enforced simultaneously. (Note: We will report further on the RBKCU and its overall trade implications septel. End Note.)

Comment

¶14. (U) In the August meeting with the FCS, Emboffs did not uncover much new information and it was still too early in the RBKCU negotiation process for the FCS to be able to speak to the effects of the RBKCU on valuation issues. What did become clear during the discussion is that FCS's increased questioning of customs valuation is not a move to combat the fraud of under-invoicing, but an attempt to gather as much revenue as possible, as a response to decreased budget revenue due in large part to lower oil prices and reduced tax revenue. It appears that the GOR is putting pressure on the tax and customs services to drum up revenue as it experiences its first budget deficit in five years. As a result, Emboffs believe that FCS's tactics of requesting additional documentation, creating paper jams, and then holding onto traders' money may remain systemic problems in the medium-term. We do not expect the entry into force of the RBKCU on January 1, 2010 to change this approach. In fact, we expect the issue to become complicated by the competing

MOSCOW 00003009 004 OF 004

demands of increasing revenues and implementation of "new" procedures at the ports of entry in all the three countries. The delayed entry into force of the harmonized customs code, will only aggravate the situation and likely create significant delays.

Beyrle